

REMARKS

In response to the above-noted Office Action, Applicant has amended Claim 1 to remove the language noted by the Examiner which caused the Claim to be rejected under 35 USC 112, second paragraph.

Regarding the rejection of Claims 1-4, 7 and 9 under 35 USC 102(b) as being anticipated by Martin et al., the Examiner notes that the device disclosed by Martin et al. permits compression between two pedicular hooks, and otherwise maintains the rejection set forth in the prior Office Action as indicated at page 2 continuing to page 3 of the Action.

However, as previously pointed out by Applicant, Martin et al. does not teach or suggest both a transverse rod and a connecting rod as called for in Claim 1. In this connection, Applicant has further amended Claim 1 so as to rearrange the claim to more clearly show how it is distinguishable over Martin et al. Claim 1 generally corresponds to the device as shown in Figure 3 which illustrates the two pedicular hooks 2 and 4, connecting rod 3 which is secured in place with respect to one of the pedicular hooks, and a transverse rod which connects the two pedicular hooks. Although the Claim also includes functional language to provide clarity to the claim which functional language the Examiner ascribes no patentable weight, Applicant notes that the structure of the device as set forth in Claim 1 which includes the two pedicular hooks, a transverse rod, and a horizontal rod is not met by Martin et al. The Examiner has not cited, and Applicant has been able to locate any teaching of a transverse rod in Martin et al. as disclosed and claimed by Applicant. The Examiner construes rod 3 in Martin et al. as a transverse rod. However, as best seen in Figure 1 of Martin et al., Martin et al. does not disclose both a transverse rod and a connecting rod. That is, rod 3 cannot be both a transverse rod and a connecting rod. Accordingly, Applicant submits that the rejection of the Claims under 35 USC 102(b) should not be maintained. Accordingly, reconsideration and withdrawal of the claims pending for examination, namely Claims 1-4 and 9 is requested.

If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

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Dated:

4/1/08

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CERTIFICATE OF MAILING:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class Mail, With Sufficient Postage, In An Envelope Addressed To: Mail Stop RCE, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Linda Metz

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ESH/lmd